

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 11, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1317-CR

Cir. Ct. No. 2010CF2457

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STACY BERNARD CAMPBELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Stacy Bernard Campbell appeals a judgment convicting him of one count of first-degree sexual assault of a child under the age of twelve and two counts of first-degree sexual assault of a child under the age of thirteen. He also appeals an order denying his motion for postconviction relief.

Campbell argues that he received ineffective assistance of trial counsel. We affirm.

¶2 To prevail on a claim of ineffective assistance of trial counsel, a defendant must show both that his lawyer's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prove deficient performance, a defendant must show that his lawyer's acts or omissions were not reasonable under prevailing professional norms. *Id.* at 688. To prove prejudice, a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

¶3 Campbell argues that his trial lawyer provided ineffective assistance of counsel because he failed to present evidence of acrimony between Campbell and the victim's mother. Campbell contends his lawyer should have sought admission at trial of letters the victim's mother wrote to him while he was being held in the county jail prior to the accusations in this case. Campbell contends that the letters would have shown that the victim's mother was distraught that he was no longer living with her family and, therefore, had a motive to retaliate against him by pressuring her daughter to fabricate sexual assault allegations against him when he did not return to live with her after his release from jail.

¶4 The record establishes that Campbell's lawyer made a reasonable strategic decision not to seek admission of the letters. During cross-examination of a police officer who investigated the sexual assaults, Campbell's lawyer referred to the letters when he asked the officer how the victim felt about the fact that Campbell was no longer living with the family. Campbell's lawyer explained in a side bar that he wanted to use the officer's knowledge about the letters to elicit

testimony showing that the victim was upset that Campbell was no longer living with the family. The prosecutor objected to the questions unless the letters were going to be admitted into evidence. Campbell's lawyer told the court that he did not want the letters admitted because they would show that the reason Campbell had left the family was because he had been put in jail. Campbell's lawyer then limited his line of questioning so that the letters would not be admitted.

¶5 “An appellate court will not second-guess a trial attorney's ‘considered selection of trial tactics or the exercise of a professional judgment in the face of alternatives that have been weighed by trial counsel.’” *State v. Elm*, 201 Wis. 2d 452, 464, 549 N.W.2d 471 (Ct. App. 1996) (citation omitted). In fact, “strategic choices made after thorough investigation of [the] law and facts relevant to plausible options are virtually unchallengeable.” *Strickland*, 466 U.S. at 690. “Even decisions made with less than a thorough investigation may be sustained if reasonable, given the strong presumption of effective assistance and deference to strategic decisions.” *State v. Balliet*, 2011 WI 79, ¶26, 336 Wis. 2d 358, 805 N.W.2d 334.

¶6 Campbell's lawyer made a strategic decision not to seek admission of the letters because he did not want the jury to know that Campbell was in jail for criminal activity unrelated to the current charges for fear that the information would negatively influence the jury's opinion of Campbell. Campbell's lawyer considered the pros and cons of the jury seeing the letters and made a reasonable decision about how to proceed in a manner that would best further his client's interests. Because Campbell's lawyer's actions were part of a reasoned trial strategy, we reject Campbell's assertion that his attorney performed deficiently in failing to seek admission of the letters. Moreover, Campbell cannot show prejudice. In the letters, the victim's mother expresses how much she and the

children miss Campbell, but she also repeatedly and emphatically admonishes Campbell for failing to financially contribute to the household when he was living with them, and warns Campbell that he is not welcome to return unless he changes his ways. At best, the letters show that the victim's mother was ambivalent about Campbell returning to her home. They do not support Campbell's contention that the victim's mother was so distraught by his absence that she had a motive to coax her daughter into falsely accusing Campbell. Therefore, there is no reasonable probability that, had the letters been admitted, the result of the trial would have been different.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

